***THE HON'BLE Ms. JUSTICE G. ROHINI**

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+WRIT PETITION NO.2678 OF 2005

% 01/02/2006

1. M. Ramachandra Reddy and 5 others. .. Petitioners

Vs.

$ 1. Govt. of A.P., rep. by its Special Chief
Secretary, Co-operation Department (Housing),
Secretariat Buildings, Hyderabad and
Others. .. Respondents

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> Head Note:

! Counsel for the Petitioners : Sri E. Madan Mohana Rao

^ Counsel for the respondents : Govt. Pleader for Co-operation
Mr. C. Durga Prasad
Mr. Ravishankar Jandhyala

Mr. M. Venkat Divakar

Cases referred :

1992 (1) ALT 611 (D.B.)

2 (2001) 8 Supreme Court Cases 509

3 1999 (2) ALT 233 (D.B.)

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.2678 OF 2005

Dated: 1st February, 2006.

Between:

1. M. Ramachandra Reddy and 5 others. .. Petitioners

And

1. Govt. of A.P., rep. by its Special Chief Secretary, Co-operation Department (Housing), Secretariat Buildings, Hyderabad and Others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.2678 OF 2005

ORDER :

Heard both sides and perused the material on record.

The petitioners claim to be the members of the third respondent - Sri Venkateswara Co-operative House Building Society for A.P. Legislators Limited. It is stated that since no elections were conducted to the Managing Committee for the past many years, Persons-in-charge were being appointed by the Government from time to time. In pursuance of the repeated requests made by the members of the society, ultimately the respondent authorities decided to hold elections and accordingly vide

proceedings dated 23-12-2004 the District Collector, who is the Election Authority has appointed the 2nd respondent – The Deputy Registrar as Election Officer. In pursuance thereof, the 2nd respondent vide proceedings dated 3-2-2005 announced the election programme, according to which the election date was fixed as 22-2-2005. However, the 1st respondent - Government of A.P. vide Memo dated 11-2-2005 stayed the elections scheduled and the same was informed to the members of the society by the 2nd respondent by notice dated 12-2-2005. The said proceedings of the 1st respondent dated 11-2-2005 as well as the order of the 2nd respondent dated 12-2-2005 are under challenge in this writ petition contending that the same are contrary to law and without jurisdiction.

The learned Counsel for the petitioner vehemently contended that since the 1st respondent has no power or authority to interfere with the election process, the impugned order dated 11-2-2005 is ex facie illegal and without jurisdiction and therefore liable to be set aside.

In support of his contentions, the learned Counsel for the petitioner relied upon the decision in M.A. SAMI KHAN vs. THE DISTRICT COLLECTOR.

In the counter-affidavit filed on behalf of the 1st respondent, it is stated that the members of the 3rd respondent society approached the Government and questioned the non-enrolment of purchasers of plots from legislators as members. They complained that as per bye-laws of Sri Venkateswara Co-operative House Building Society, whereas only legislators are entitled to be members/voters of the society, the employees of Assembly were allotted plots and were given voting rights. It is further stated that the majority of the members had not received notices as they were outside the city and those involved in malpractices and facing criminal charges before the Court of Law and facing investigation by the ACB were allowed to contest the elections. Since opportunity was not given to the members to participate in democratic elections and those indulged in malpractices were not deleted from membership, it was represented to the Government to stay the elections. Accordingly, under the impugned Memo the elections were stayed. It is also stated

that the Government in G.O.Ms.No.368, A & C (Co-op IV) Department, dated 29-12-1999 had withdrawn the powers conferred on the Co-operative Departmental Officers in respect of five major Co-op. Societies in twin cities including Sri Venkateswara Co-op. House Building Society for A.P. Legislators Limited, Hyderabad and placed them under the direct control of the Commissioner for Co-operation & Registrar of Co-operative Societies, A.P., Hyderabad. It is reported by the Divisional Co-operative Officer, Golconda Division, Hyderabad that the District Collector / Election Authority, Hyderabad notified the elections to the posts of the President and Members of the Managing Committee of Sri Venkateswara Co-op. House Building Society and appointed the Divisional Co-operative Officer, Secunderabad as Election Officer. In fact, the notification issued was without prior approval of the Commissioner for Co-operation and Registrar of Co-operative Societies. The 1st respondent after careful consideration and in the larger interest of the members of the society had stayed the elections under the impugned memo.

The respondent No.4 as well as the respondent Nos. 5 to 7 who got themselves impleaded to the writ petition, filed separate counter-affidavits stating that as per the bye-laws the society in question was registered exclusively for members of A.P. Legislative Assembly. As per the orders and notifications issued by the State Government when once the housing society which was exclusively registered for certain class or category of members, they shall not amend their bye-laws at a later date to circumvent the rules and admit other class of members. While the matter stood thus quite contrary to the statute and rules, guidelines, orders, and notifications issued by the Government from time to time, the petitioners who had a criminal record and who were land-grabbers and who had the properties of the society illegally, got a notification issued with 120 voters to avoid elections to be conducted with all the 640 members of the society. Out of all, 120 names were fictitious and bogus. Out of 120 names, 80 are not MLAs, and they are Sweepers, Office boys, henchmen of the petitioners, Hooligans and Riff-raff people. As per the Act, the election authorities have to prepare a draft voters list and place it in the premises of the society and call for objections and after one week finalise the final list of eligible voters. While doing so, the authority has to keep in mind the statutory orders and notifications which are binding on them to see that right class of members alone are admitted and members who do not belong to the category or

class of members for which the society is exclusively registered are not admitted. However, with the connivance of the petitioners, who are busy bodies and land-grabbers with criminal record, the voters list had been prepared to suit the convenience of the petitioners. Hence, a compliant was made to the Government to safeguard the interest of the society on the basis of which the elections were rightly stayed.

It is clear from the impugned memo that the same was issued on the basis of a representation made by the fourth respondent and other members of the society before the Minister for Co-operation making certain allegations with regard to the procedure followed while issuing the election notice dated 3-2-2005. In pursuance thereof, the 1st respondent while directing the 2nd respondent – Election Officer to furnish the records, stayed the elections to the third respondent society.

The learned Counsel for the petitioner contends that once the election notification is issued, the election process cannot be interfered with and such course is not contemplated under the provisions of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act'). The learned Counsel submits that even assuming that there are any irregularities or illegalities with regard to the election process, the proper remedy is to raise a dispute under Section 61 of the Act, but not otherwise and therefore the 1st respondent ought not to have stayed the election process under the impugned memo.

On the other hand, the learned Government Pleader submits that under Section 123 of the Act, the Government may exempt any society from any of the provisions of this Act and in exercise of the said power the impugned memo dated 11-2-2005 was issued in the larger interest of the members of the society.

At the outset, it is to be noted that the power conferred under Section 123 of the Act is only to exempt any society or any class of societies from any of the provisions of the Act. Under no circumstances, the said power can be taken aid to

justify the impugned memo. Hence, the submission of the learned Government Pleader, which is not well founded cannot be accepted.

The learned Counsel for the respondents 4 and 5 to 7 has also drawn attention of this Court to Section 131 of the Act under which the Government is empowered to issue orders or directions to the Registrar in accordance with the provisions of the Act and in the interest of the co-operative movement and the Registrar is bound to give effect to such orders or directions.

Section 131 of the Act may be extracted hereunder :

> *"**131. Power of Government to give directions** :- (1) The Government may generally or in any particular matter under this Act, issue such orders and directions, which are in accordance with the provisions of this Act and in the interest of Cooperative movement in the State as they may consider necessary to the Registrar and thereupon he shall give effect to such orders or directions and shall report to the Government in due course the result thereof.*
>
> *(2) In any case, in which a direction has been given under sub-section (1), the Government may call for and examine the record of the proceedings of the Registrar and pass such orders in the case as they may think fit :*
>
> *Provided that before passing any order under this sub-section, the person likely to be affected by such order shall be given an opportunity of making his representation".*

A bare perusal of the above provision shows that the orders and directions that may be issued by the Government shall be in accordance with the provisions of the Act and the same shall be in the interest of the co-operative movement in the State. Hence, under Section 131 of the Act though the Government while calling for the record of the proceedings of the Registrar may issue such orders or directions, the same shall be an order or direction which is permissible under the provisions of the Act.

Therefore, the question is whether the directions issued by the Government

under the impugned memo to stay the elections are in accordance with the provisions of the Act. In other words, whether the Act contemplates for interdicting the election process and if so under what circumstances.

Under Rule 22-AAA of the A.P. Co-operative Societies Rules, 1964 the Government and the Election Authority were empowered to postpone or alter the date of election to the societies fixed or commenced under Rule 22 or Rule 22-B at any stage thereof for the reasons to be recorded in writing. However, under G.O.Ms.No.15, dated 15-1-2002 the said Rule 22-AAA was omitted and Rule 22-C has been inserted which runs as under :

> *"22-C. (1) Notwithstanding anything contained in these rules, the Government or the Election authority may direct the postponement of elections under one or more of the following circumstances :-*
>
> *(i) Break down of law and order affecting the peaceful and lawful conduct of elections.*
>
> *(ii) Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.*
>
> *(iii) Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely.*
>
> *b) The postponement hall be done only by issue of an order which shall specify the grounds of postponement. After such postponement the election process shall be recommended when the conditions become conductive for recommencing of election, by issue of an order by the Authority that has postponed the elections. The process will recommence from the stage at which it was obstructed or interrupted."*

Though there can be no dispute about the power conferred on the Government or the Election Authority under Rule 22-C to postpone the elections, it is relevant to note that such postponement shall be only under any of the grounds enumerated under Sub-rule (1) of Rule 22-C. Hence, the power conferred on the Government under Section 131 of the Act to give directions cannot be extended to interdict the election process on the grounds other than that are mentioned under Rule 22-C. There is no other provision under the Act which provides for postponement of elections. Therefore, postponement of elections merely on the basis of certain complaints received from the members of the society with regard to

preparation of voters lists or alleged irregularities in granting of membership, being not permissible under the provisions of the Act and the Rules, cannot be ordered even in exercise of power under Section 131 of the Act.

In the case on hand, obviously, the postponement was not on any of the grounds mentioned under Rule 22-C (1). That apart, the impugned memo dated 11-02-2005 was absolutely silent as to the grounds on which the election was ordered to be stayed. It is also relevant to note that as per Rule 22-C(b), it is necessary for the authority to specify the grounds of postponement while directing postponement of the elections.

Even assuming that there were certain irregularities in enrolment of the members of the society and preparation of the voters lists as alleged by the respondents 4 to 7, as held in SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA v. STATE OF MAHARASHTRA, the same can at the most be a valid ground to raise an election dispute after the declaration of the result. Sub-sections (3) and (4) of Section 61 of the Act in clear terms provide that any dispute relating to any election to a committee of a society shall be referred to the Tribunal only after the date of declaration of the result of such election.

A Division Bench of this Court in M.A.R.V.S. SAI BABA vs. COMMISSIONER OF CO-OP. SOCIETIES while dealing with an identical question relating to postponement of election under Rule 22-AAA of the Rules which was in force at that time held as under :

> *"The matter relating to irregularities in the electoral list-either wrong admission of members or wrong deletions of the valid members from the electoral roll-is not a matter which falls for action under Rule 22-AAA of the Rules in view of the discussion mentioned supra as this is one squarely covered either by Section 32 (7) (a) of the Act before the commencement of the election process or Section 61 (3) of the Act or sub-sections (3) and (4) of Section 61 of the Act after the election process starts. In the instant case, there is no dispute that the process of*

election has commenced and as such, the action in postponing the elections on the ground of irregularities in the voters' list is invalid as being contrary to the provisions contained under sub-sections (3) and (4) of Section 61 of the Act. … ….."

In the light of the ratio laid down in the above decisions and having regard to the reasons stated supra, in my considered opinion, the impugned memo dated 11-02-2005 staying the election to the 3rd respondent Society is arbitrary, illegal and without jurisdiction.

Accordingly, the impugned memo dated 11-02-2005 as well as the consequential notice dated 12-2-2005 issued by the 2nd respondent are set aside and the Writ Petition is allowed with a direction to the 2nd respondent – Election Officer to continue the election process from the stage where it was stopped. No costs.

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G. ROHINI,J.

Dt. 01–02-2006.

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